IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4486 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYESH CHIMANLAL MISTRY

Versus

NIVASI NAYAB COLLECTOR

Appearance:

1. Special Civil Application No. 4486 of 1987

MR RR MARSHALL for Petitioner No. 1

Mr.Premal Joshi, learned AGP for Respondents

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 18/10/2002

ORAL JUDGEMENT

1. A petition of 1987 is notified after 15 years for final hearing and by virtue of the relief granted in favour of the petitioner, the petitioner is continued in

service with the respondent - authority. The petitioner has challenged the order passed by the Resident Deputy Collector, Valsad dated 29.8.87 wherein by a common order, the services of petitioner and one Sunil M.Patel, working as ad hoc Peons, were terminated. It is this order which is under challenge and while issuing notice to the respondents, interim relief restraining the respondents from terminating the services of the petitioner was granted. After hearing on the point of notice, as per order dated 6.11.90 rule was issued, which was made returnable on 26.11.90 and the interim relief granted earlier was continued. Though the rule was made returnable on 26.11.90, for the reasons best known, petition is not notified before the court on the returnable date and thereafter when the petition was notified before the court for final hearing, the matter was adjourned from time to time and ultimately the matter has reached before me earlier on 23.8.2002 and considering the request made before me by the counsel appearing in the matter, the matter was adjourned by treating this petition as part heard.

2. Mr. Marshal, learned advocate appearing on behalf of the petitioner, has during hearing of the petition, took me through the petition and the order of appointment issued by the Resident Deputy Collector, Valsad dated 4.9.86. In the said common order,the petitioner was appointed as a temporary Peon in the Civil Supplies Branch in the Office of the Collector at Valsad in place of vacancy of Jayantibhai Velabhai. The order indicates that the appointment was purely on temporary basis and the services will be terminated without giving any notice. The order further indicated that their appointment is only for 29 days from the date they report for duty. It is the case of the petitioner that by virtue of the appointment made under order dated 4.9.86, the petitioner was appointed on the post of Peon temporarily for a period of 29 days and at the end of 29 days, by giving one day artificial break, the petitioner was continued in service as a Peon in the Office of the Collector till 28.8.87. On 29.8.87, the Resident Deputy Collector, Valsad issued a common order in the name of petitioner and Sunil Patel. As observed earlier, petitioner was working as a temporary Peon in the Civil Supplies Department of the office of the Collector at Valsad while Sunil Patel was working as a temporary Peon in Mid Day Meal Scheme Branch with the Office of the Collector. As their appointment was only on temporary basis for 29 days, the petitioner and Sunil Patel were informed that their services will be terminated after completing 29 days from 4.8.87 or on 31.8.87, whichever

is earlier. It is not in dispute that the petitioner for the first time was appointed on temporary basis for a period of 29 days as per order dated 4.9.86 and it is only as per order dated 29.8.87, the services of the petitioner were terminated with effect from 31.8.87. As observed earlier, this order of termination is stayed by this court and though the Rule was made returnable on 26.11.90, the petition has remained pending.

3. A reply affidavit is filed by R.R.Solanki, the Resident Deputy Collector, Valsad on 29.9.87 opposing the admission of the petition as according to him that the petition is misconceived as petitioner's appointment was to work as a Peon on purely temporary basis on a permanent post. Thereafter, a further affidavit dated 26.11.90 was filed by M.B.Parmar, Resident Deputy Collector, Valsad reiterating the affidavit filed by Solanki and he averred that the petitioner was regularly appointed as Peon on purely temporary and ad hoc basis. After the appointment of the petitioner was made on temporary and ad hoc basis, due to economic drive of the respondent - Government, several relief works were closed down and further that 44 Divisions and 292 Sub-Divisions under Narmada Development Department have been closed down and, therefore, a list of surplus Peons had been sent to the office of the Collector, Valsad. In the said list, only those persons' names were included who had served for more than 15 years and further that they all were recruited as per normal practice of the State of Gujarat. It is further found that the services of the petitioner will be terminated after following legal procedure and,therefore,there should not be any grievance and even after the termination of the services of the petitioner, the petitioner can approach for redressal of his grievance before the appropriate forum and prayed that the petitioner is not entitled for any relief and prayed for dismissal of the petition.

4. When I have heard Mr.Marshal earlier, he has tendered affidavit of the petitioner by highlighting certain facts. Affidavit of the petitioner dated 19.9.2002 shows that at present petitioner is working as a driver attached to the office of Collector on a permanent post. He further averred that there are 3 other regular posts which are lying vacant. According to the petitioner one post of driver is vacant in the Prant office at Valsad and one post of driver is vacant in the office of District Ayojan Mandal Office at Valsad and one post of peon is vacant in the office of Resident Deputy Collector at Valsad. It is the case of the petitioner that though the vacant posts are there, the respondents

are not filling up the permanent posts by appointing a person and appointments are being made on ad hoc basis and by making such ad hoc appointment, they are getting only a salary of Rs.1350/-. The affidavit further shows that persons similarly appointed had filed petition,which was also dismissed before seven years and these persons are retained and they are working with the respondent authority. According to the petitioner, they are Sunil Patel, Ashokbhai Sukarbhai and other nine persons. It is the case of the petitioner that since 1986 the petitioner is working as Class IV employee with the Government and the petitioner is at present working as a driver attached with the Collector's office at Valsad.

5. Considering the affidavit filed by the petitioner, Mr.Joshi, learned AGP has prayed for time to get proper instructions from the authority and accordingly the matter was kept for hearing today. When the matter was called out today, Shri D.B.Rehwar, Resident Deputy Collector, Valsad, remained present in the court and on getting instructions from him, Mr. Joshi, learned AGP, has brought to my notice that the Collector of Valsad has recently in the month of July 2002 by way of proposal moved the Government, namely, Revenue Department at Gandhinagar and in the said proposal, a request was made to appoint those persons, who were working in the post of Peon and driver by referring the decision rendered by this court in Special Civil Application No.4926 of 1987 and names of seven persons were mentioned for their appointment, who were working since long with the Government authority. In the said proposal, name of Sunil Patel is also found. As observed earlier, Sunil Patel was also appointed by a common order when the petitioner was appointed as per order dated 4.9.86 and subsequently as per order dated 29.8.87 his services were also ordered to be terminated.

6. In this Petition, no reply affidavit is filed denying the statement made in the affidavit of the petitioner dated 19.9.2002. However, as brought to my notice that the Collector, Valsad has by way of proposal moved the Revenue Department of the Government, recommending the names of seven persons for their appointment on the regular posts. Mr. Joshi, learned AGP, under instructions from Rehwar has further stated that name of the petitioner will be also recommended to the Revenue Department on the same line,where names of seven persons were recommended earlier as per proposal dated 8.7.2002. He further states that the authority will not terminate the services of the petitioner till the outcome of the proposal, which will be sent to the

Government and till then, the petitioner will continue to work on the post on ad hoc basis. Mr.Joshi, learned AGP, further states that even if the Government turns down the proposal for regular appointment, the authority will continue the petitioner on the same capacity on ad hoc basis. Considering the statement made by Mr.Joshi, on instructions from Rehwar, Resident Deputy Collector, Valsad, Mr.Marshal, seeks permission to withdraw this petition, with a liberty that in case any difficult arises, he may be permitted to move the Court. Request made by Mr. Marshal for withdrawal of the petition is granted. As the petitioner is in service since 1986 and the authority is going to move the proposal for regular appointment, Government shall consider the same sympathetically, as early as possible. The petition accordingly stands disposed of as withdrawn. Interim relief granted earlier, in view of the statement made by learned AGP, to continue. Rule is decided accordingly with no order as to costs.

(D.K.Trivedi,J)

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